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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,873	01/30/2004	Teruaki Itoh	160-407	4090
23117	7590	08/22/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			WALLENHORST, MAUREEN	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/766,873

Applicant(s)

ITOH, TERUAKI

Examiner

Maureen M. Wallenhorst

Art Unit

1743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

*Maureen M. Wallenhorst*

MAUREEN M. WALLENHORST  
PRIMARY EXAMINER  
GROUP 1700

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Primary Examiner  
Art Unit: 1743

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for the following reasons. Applicants argue that there is no suggestion to combine Wada et al and Kuster et al since nowhere does Wada et al suggest that slipping buckets is a concern, and nowhere does Kuster suggest that its closed slots provide functionality. In addition, Applicants argue that the closing of the slots taught by Wada et al would render the device of Wada et al inoperable, and that the slots 42 taught by Kuster et al are closed at their radial outermost ends to maintain the cassettes in an upright condition. In response to these arguments, it is noted that the choice of whether to have open or closed slots in a rotor is an obvious engineering design choice (see In re Dailey, 149 USPQ 47). Both configurations serve to operate in the same manner. Having the rotor closed entirely around its circumference allows contact between the rotor and the centrifuge compartment intended to hold the rotor at all points around the circumference of the rotor, thus providing a tight fit. The secondary reference to Kuster et al shows that it is obvious to design rotors with different forms (i.e. open or closed slots). The choice of whether to have open or closed slots is simply an engineering choice that does not affect the operation of the rotor to spin, and the operation of the buckets to move radially outward upon spinning of the rotor. It is also noted that if the rotor taught by Wada et al were to be changed to have closed slots, this would not render the apparatus inoperative for its intended purpose since the device of Wada et al would operate in the same way as the instant invention since the buckets 3 taught by Wada et al are mounted in the slots by pins 4 that allow the buckets to swing radially. This is the same structure taught for the instant invention in the specification where the buckets are supported in the slots of the disc at their middle parts by pins or shafts J. Therefore, the closing of the slots taught by Wada et al should not hinder the radial outward swing of the buckets since it does not hinder the buckets of the instant invention, and the buckets of Wada et al are mounted to the slots in the same way as in the instant invention. It is also noted that Kuster et al never teach that the cassettes 100 have to remain in an upright condition in the slots 42 of the centrifuge 40. Kuster et al only teach that the cassettes 100 remain upright in the slots of the storage unit 12. Kuster et al teach, instead, that after the cassettes 100 are transferred to the slots 42 of the centrifuge 40, the centrifuge 40 spins, thus inherently causing the cassettes to move radially outwardly as in the instant invention.